Latheefa Beebi Koya & Anor v Suruhanjaya Pencegahan Rasuah Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1–25–94–04 OF 2012
ZALEHA YUSOF J
30 JANUARY 2013

Administrative Law — Exercise of administrative powers — Judicial review — Whether agency abused powers — Malaysian Anti-Corruption Commission ('MACC') issued notices to lawyers who had accompanied their client for recording of statement to themselves attend to provide statements — Whether notices void and unlawful — Whether MACC guilty of intimidation and abuse of powers — Whether MACC failed to show reason why lawyers themselves had to give statements — Whether notices interfered with lawyers' rights obligations and duties to clients — Whether issuance of notices were 'decision' capable of being judicially reviewed

The applicants were lawyers who had acted for a client who was summoned by the first respondent ('MACC') to give a statement to them under s 30 of the Malaysian Anti-Corruption Act 2009 ('the Act') to assist them in investigations into an alleged offence committed by a third party. On their client's instructions, the applicants had insisted that they be allowed to be present when the statement from their client was being recorded. The applicants' presence was allowed but they were told they might also be required to provide statements under the Act. Subsequently, when the applicants, when approached, refused to give any statements, MACC issued them notices ('the notices') under s 30(1)(a) of the Act requiring them to be present at MACC's premises to provide statements. They were cautioned that their failure to attend was an offence under the Act which might subject them to a fine, imprisonment or both. By their instant judicial review application, the applicants sought declarations that the notices were unlawful and that MACC did not have the power to compel lawyers to provide statements simply because they were present when statements were recorded from their clients. The applicants also sought an order of certiorari to quash the notices as well as general and exemplary damages. They contended that the decision to issue the notices went beyond the administrative or procedural exercise of MACC's functions and violated art 5 of the Federal Constitution on an individual's right to legal representation. The respondents contended that the notices did not amount to a 'decision' that could be judicially reviewed as they were merely directives to appear for the purpose of assisting in investigations.

Held, allowing the application:

(1) The notices were a 'decision' capable of being judicially reviewed because

they affected the rights of the applicants and their obligations as lawyers representing their client. The notices were a direct interference with the exercise of the applicants' duty to their client. The applicants had no choice but to comply as non-compliance with the notices would have resulted in their committing an offence under s 30 of the Act. The issue was also subject to judicial review because the question whether the respondents could issue such notices to the applicants under the circumstances of the case was an issue of law (see para 19).

(2) The issuance of the notices was clearly an act of intimidation and abuse of powers on the part of the respondents and were therefore void and unlawful (see para 27).

(3) Other than the fact the applicants were present during the interview of their client, there was no evidence they had interfered with the interview. The onus of proving their presence had impeded the investigation fell on the respondents. The respondents failed to prove this. There was no logic in the respondents ordering the applicants to attend to be examined in relation to the investigation when they were merely lawyers representing their client. How could they be expected to assist in the investigation when s 46 of the Act itself protected privileged information between solicitor and client? (see para 21).

(4) After having adopted the United Nations Basic Principles on the Role of Lawyers, Malaysia should give due respect and adhere to it. The independence of lawyers was a fundamental principle recognised internationally. Lawyers played a key role in the administration of justice and protection of human rights. They should be protected from any form of intimidation and interference in the performance of their obligation to advise and act for clients. In addition, the fundamental principle of solicitor-client confidentiality by which lawyers were bound must be preserved (see paras 24 & 26).

[Bahasa Malaysia summary

Pemohon-pemohon di sini merupakan peguam-peguam yang bertindak untuk seorang pelanggan yang dipanggil oleh responden pertama ('MACC') untuk memberikan keterangan kepada mereka di bawah s 30 Akta Pencegahan Rasuah Malaysia 2009 ('Akta') untuk membantu mereka di dalam siasatan ke dalam satu kesalahan yang dilakukan oleh pihak ketiga. Atas arahan pelanggan mereka, pemohon-pemohon menegaskan bahawa mereka dibenarkan untuk hadir apabila kenyataan daripada pelanggan mereka direkodkan. Kehadiran pemohon-pemohon dibenarkan tetapi mereka diberitahu yang mereka mungkin juga dipanggil untuk memberikan kenyataan-kenyataan di bawah Akta. Seterusnya, apabila pemohon-pemohon, bila dimaklumkan, enggan memberikan apa-apa kenyataan, MACC mengeluarkan notis-notis ('notis-notis') di bawah s 30(1)(a) Akta kepada mereka yang memerlukan

mereka untuk hadir di premis MACC untuk memberikan kenyataan-kenyataan. Mereka diberi amaran bahawa kegagalan mereka untuk hadir merupakan satu kesalahan di bawah Akta yang boleh membuatkan mereka didenda, dipenjara atau kedua-duanya sekali. Melalui permohonan semakan kehakiman ini, pemohon-pemohon menuntut deklarasi bahawa notis-notis tersebut adalah salah di sisi undang-undang dan bahawa MACC tidak mempunyai kuasa untuk memaksa peguamcara untuk memberikan keterangan semata-mata kerana mereka hadir ketika kenyataan-kenyataan direkodkan daripada pelanggan mereka. Pemohon-pemohon juga menuntut satu perintah certiorari untuk membatalkan notis-notis begitu juga dengan ganti rugi am dan ganti rugi teladan. Mereka menghujah bahawa keputusan untuk mengeluarkan notis-notis melangkaui perlaksanaan fungsi pentadbiran atau prosedur MACC dan melanggar perkara 5 Perlembagaan Persekutuan mengenai hak individu untuk perwakilan undang-undang. Responden-responden menghujah bahawa notis-notis tersebut bukanlah satu 'keputusan' yang boleh disemak secara kehakiman memandangkan notis-notis tersebut hanyalah arahan-arahan untuk hadir bagi tujuan membantu siasatan.

Diputuskan, membenarkan permohonan:

(1) Notis-notis merupakan satu 'keputusan' yang boleh disemak secara kehakiman kerana notis-notis tersebut menjejaskan hak pemohon-pemohon dan kewajipan mereka sebagai peguam yang mewakili pelanggan mereka. Notis-notis tersebut merupakan campur tangan secara langsung dengan perlaksanaan kewajipan pemohon-pemohon kepada pelanggan mereka. Pemohon-pemohon tidak mempunyai pilihan tetapi untuk patuh kerana ketidakpatuhan dengan notis-notis tersebut akan mengakibatkan mereka melakukan satu kesalahan di bawah s 30 Akta. Isu tersebut juga tertakluk kepada semakan kehakiman kerana persoalan sama ada responden-responden boleh mengeluarkan notis-notis tersebut kepada pemohon-pemohon mengikut keadaan kes merupakan satu isu undang-undang (lihat perenggan 19).

(2) Pengeluaran notis-notis tersebut adalah jelas merupakan satu tindakan mengugut dan penyalahgunaan kuasa bagi pihak responden-responden dan oleh itu tidak sah dan menyalahi undang-undang (lihat perenggan 27).

(3) Selain daripada fakta pemohon-pemohon hadir semasa soal siasat pelanggan mereka, tiada keterangan yang mereka telah campur tangan dalam soal siasat. Beban membuktikan kehadiran mereka telah mengganggu penyiasatan terletak ke atas responden-responden. Responden-responden gagal membuktikan perkara ini. Adalah tidak logik bagi responden-responden mengarahkan pemohon-pemohon untuk hadir untuk disiasat berhubung penyiasatan tersebut apabila

mereka hanyalah peguam-peguam yang mewakili pelanggan mereka. Bagaimana mereka boleh diharapkan untuk membantu penyiasatan apabila s 46 Akta sendiri melindungi maklumat istimewa di antara peguam dan pelanggan? (lihat perenggan 21).

(4) Selepas menerima pakai Prinsip Asas Bangsa-Bangsa Bersatu mengenai Peranan Peguam, Malaysia seharusnya menghormati dan mematuhinya. Kebebasan peguam adalah prinsip utama yang diiktiraf di peringkat antarabangsa. Peguam memainkan peranan utama di dalam pentadbiran undang-undang dan perlindungan hak asasi manusia. Mereka seharusnya dilindungi daripada apa-apa bentuk ugutan dan campur tangan di dalam perlaksanaan kewajipan mereka untuk menasihatkan dan bertindak untuk pelanggan-pelanggan. Tambahan pula, prinsip utama kerahsiaan peguam-pelanggan yang mengikat peguam perlu dikekalkan (lihat perenggan 24 & 26).]

Notes

For cases on judicial review, see 1(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 98–125.

Cases referred to

Ahmad Azam bin Mohamed Salleh & Ors v Jabatan Pembangunan Koperasi Malaysia & Ors [2004] 4 MLJ 86, HC (refd)

Baldwin and Francis Ltd v Patents Appeal Tribunal [1959] AC 663, HL (refd)

Chin Shui Lan v Directors of Lands & Surveys [1995] MLJU 423; [1995] 4 CLJ 358, HC (refd)

Council of Civil Service Unions v Minister For Civil Service [1985] AC 374, HL (refd)

Haji Salleh bin Jafaruddin v Datuk Celestine Ujang & Ors [1986] 2 MLJ 412, SC (refd)

Hashim bin Saud v Yahaya bin Hashim & Anor [1977] 2 MLJ 116, FC (refd)

R v London Borough of Hillingdon, ex parte Royco Homes Ltd [1974] 2 All ER 643, QBD (refd)

R v Sloan [1990] 1 NZLR 474, HC (refd)

Ridge v Baldwin [1964] AC 40, HL (refd)

Legislation referred to

Federal Constitution art 5

Malaysian Anti-Corruption Act 2009 s 16(b)(B), 30, 30(1)(a), (6), (10), 46

Rules of the High Court 1980 O 53 rr 1, 4

Sivarasa Rasiah (Muhammad Afiq Muhamad Noor with him) (Daim & Gamany) for the appellants.

Effandi Nazila bin Abdullah (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Zaleha Yusof J:

[1] Both the applicants are advocates and solicitors of the High Court of Malaya. They acted for one Datuk Shamsubahrin bin Ismail (their client) who had been summoned by the first respondent to give statement to assist in investigation of an offence under s 16(b)(B) of the Malaysian Anti-Corruption Act 2009 ('Act 694') against one Datuk Seri Dr Mohamad Salleh bin Ismail, the Executive Director of National Feedlot Corporation ('NFC'). The order to give statement was pursuant to s 30 of Act 694.

[2] The applicants had on 19 March 2012, accompanied their client to the first respondent's premises and insisted to be present throughout the recording of the statement, on the instruction of their client. According to the affidavit in reply of the respondents, as the situation then was tense and with the presence of reporters, the applicants were allowed to accompany their client during statement taking but the applicants were informed by the first respondent of the possibility that their statements themselves would also be recorded.

[3] The applicants, when approached, had refused to give any statement to the first respondent. Hence, the first respondent through the third respondent, had on the same day, issued notices under s 30(1)(a) of Act 694 requiring the applicant to be present at the first respondent's premises on 23 March 2012 and to give statements, just like their client. They were notified that failure to comply to the said notices may subject them to the punishment of a fine or imprisonment or both.

[4] Not happy with the respondents' action, the applicants now seek for the following reliefs:

(a) an order of certiorari to quash the notices ('the said notices') under s 30(1)(a) of Act 694 dated 19 March 2012;

(b) declaration that notices under s 30(1)(a) of Act 694 dated 19 March 2012 are ultra vires and unlawful;

(c) declaration that the first respondent does not have the power to take statements or testimony of lawyers who appear with their client who has been summoned to give statements to the first respondent;

(d) general damages and exemplary damages; and

(e) such further reliefs that the court deems fit.

A THE ISSUE

[5] The main issue here is whether the issuance of the said notices is a decision which entitled the applicants to make this application.

B THE APPLICANTS' CASE

[6] Learned counsel for the applicants submits that in the case of *Council of Civil Service Unions v Minister For Civil Service* [1985] AC 374, the House of C Lords held that for a decision to be susceptible to the court's reviewing powers, there must first be a decision by a decision maker or a refusal by him to make a decision, and, that decision must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy.

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[7] He also quotes the case of *R v Sloan* [1990] 1 NZLR 474, wherein Justice Hardie Boys said:

E > Secondly, it is not every decision made under statutory authority that is subject to review. A decision must go beyond what is merely administrative or procedural or of a function rather than a power. Quite plainly, the conclusions reached by the inspectors here are of this kind and so are not reviewable …

F **[8]** Learned counsel for the applicants further submits that the third respondent's decision to issue such notices goes beyond the administrative or procedural or the exercise of a function of the first respondent and is a clear violation of art 5 of the Federal Constitution on the right to legal counsel.

G THE RESPONDENTS' CASE

[9] Learned senior federal counsel appearing for the respondents on the other hand submits that there was no decision here as the matter was still at investigation stage. He quotes the case of *Haji Salleh Bin Jafaruddin v Datuk* H *Celestine Ujang & Ors* [1986] 2 MLJ 412 where the Supreme Court held that:

> The proceedings of the Committee of Privileges of the Dewan Undangan Negeri, Sarawak, when acting as an investigating body are not amenable to an order of prohibition and the learned judge was right in refusing the application under O 53 I r 1 of the Rules of the High Court 1980.

[10] He also quotes *Sloan*'s case and the same statement of Justice Hardie Boys as follows:

> Secondly, it is not every decision made under statutory authority that is subject to review. A decision must go beyond what is merely administrative or procedural or of a function rather than a power. Quite plainly, the conclusions reached by the inspectors here are of this kind and so are not reviewable. To hold otherwise would, as Mr Neave submitted, open up the investigative process of all law enforcement agencies to constant judicial review; and that cannot have been the intention of Parliament.

[11] Also in *Ahmad Azam bin Mohamed Salleh & Ors v Jabatan Pembangunan Koperasi Malaysia & Ors* [2004] 4 MLJ 86, the High Court, learned senior federal counsel argues had held:

> To hold such a process of inspection reviewable would open up the investigation process of all enforcement agencies to constant judicial review. I have no valid reason to open the floodgate …

[12] The learned senior federal counsel further submits that the notice given is also not a final determination but merely a directive to appear for the purpose of assisting in investigation.

THE FINDINGS OF COURT

[13] The relevant provisions of s 16(b)(B) of Act 694 and s 30 of the same are as follows:

> 16 Any person who by himself, or by or in conjunction with any other person —
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> (a) …
>
> (b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person.
>
> any gratification as an inducement to or a reward for, or otherwise on account of —
>
> A …
>
> B any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned.
>
> commits an offence.
>
> 30 Power to examine persons.
>
> (1) An officer of the commission investigating an offence under this Act may
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> (a) order any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence;

(b) order any person, to produce before him, within the time specified by such officer, any book, document, records, accounts or computerized data, or any certified copy thereof, or any other article which may, in his opinion, assist in the investigation into the offence;

(c) by written notice order any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which, in such officer's opinion, would be of assistance in the investigation into the offence, within the time specified by such officer; and

(d) order any person to attend before him for the purpose of having his handwriting or voice sample taken.

(2) …

(3) A person to whom an order has been given under paragraph (1)(a) shall —

(a) attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and

(b) during such examination, disclose all information which is within his knowledge, or which is available to him, in respect of the matter in relation to which he is being examined, and answer any question put to him truthfully and to the best of his knowledge and belief and shall no refuse to answer any question on the ground that it tends to incriminate him or his spouse.

(4) A person to whom an order has been given under paragraph (1)(b) shall not conceal, destroy, alter, remove from Malaysia, or deal with, expend, or dispose of, any book, document, record, account or computerized data, or article specified in the order, or alter or deface any entry in any such book, document, record, account or computerized data or cause such act to be done, or assist or conspire to do such act.

(5) A person to whom a written notice has been given under paragraph (l)(c) shall, in his statement, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, and shall not refuse to furnish or disclose the information on the ground that it tends to incriminate him or his spouse.

(6) A person to whom an order or a notice is given under subsection (1) shall comply with such order to notice and with subsections (3), (4) and (5), notwithstanding any written law or rule of law to the contrary.

(7) Where any person discloses any information or produces any book, document, record, account or computerized data or article pursuant to subsections (1), (3) and (5), neither the first-mentioned person, nor any other person on whose behalf or direction or as whose agent or employee the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution, except a prosecution for an offence under section 27, for any offence under or by virtue of any

written law, or to any proceedings or claim by any person under or by virtue of any law or under or by virtue of any contract, agreement or arrangement, or otherwise.

(8) An officer of the commission examining a person under paragraph (1)(a) shall record in writing any statement made by the person and the statement so recorded shall be read to and signed by the person, and where such person refuses to sign the record, the officer shall endorse thereon under his hand the fact of such refusal and the reasons therefore, if any, stated by the person examined.

(9) The record of an examination under paragraph (l)(a), or a written statement on oath or affirmation made pursuant to 1(c), or any book, document, record, account or computerized data, or article produced under paragraph (l)(b) or otherwise in the course of an examination under paragraph (I) (a), or under a written statement on oath or affirmation made pursuant to paragraph (l)(c), or record of examination of sample taken under paragraph (l)(d) shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court-

(a) for an offence under this Act; or

(b) for the forfeiture of property pursuant to section 40 or 41,

regardless whether such proceedings are against the person who was examined, or who produced the book, document, record, account or computerized data, or article, or who made the written statement on oath or affirmation, or against any other person.

(10) Any person who contravenes this section commits and offence.

[14] I have scrutinised this application and submissions made by the parties very carefully.

[15] As submitted by learned counsel for the applicants, the House of Lords in *Council of Civil Service Union*'s case had held that for a decision to be susceptible to the court's reviewing powers, there must first be a decision by a decision maker or a refusal by him to make a decision, and, that decision must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy. At p 949/F–H Lord Diplock said:

> To qualify as a subject matter for judicial review, the decision must have consequences which affects some people (or body of people) other than the decision-maker, although it may affect him too. It must affect such person either:
>
> (a) by altering rights and obligations of that person which are enforceable by or against him in private law;
>
> (b) by depriving him of some benefits or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can

A legitimately expect to be permitted to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he had received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.
B

[16] In *Baldwin and Francis Ltd v Patents Appeal Tribunal* [1959] AC 663, Lord Denning had said that where the applicant is a party grieved who has no other remedy, the court will grant the order of certiorari *ex debito justitae*.
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[17] Our court in *Chin Shui Lan v Directors of Lands & Surveys* [1995] MLJU 423; [1995] 4 CLJ 358 had followed the House of Lords' decision in *Ridge v Baldwin* [1964] AC 40 that judicial review lies against any person or body of person charged with any public duty.
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[18] In *R v London Borough of Hillingdon, ex parte Royco Homes Ltd* [1974] 2 All ER 643, the applicants moved for, inter alia, an order of certiorari to bring up and quash the grant of the planning permission granted by a local planning authority, on the grounds that the four conditions attached to the permission
E were ultra vires the planning authority. The court held that certiorari would lie in appropriate cases to control the exercise by a local planning authority of its jurisdiction under the planning Acts, ie in clear cases where the issue was a matter of law and the matter of law appeared on the face of the record. It was
F immaterial that the planning authority was not a body which had the duty to act judicially, for certiorari would issue to anybody which had jurisdiction to determine the rights of subject whether or not it was required to act judicially.

[19] What I am trying to show by citing all those authorities is that case law
G has shown that if the decision affects the aggrieved party by either altering his rights or obligation, then the decision is qualified for judicial review. Case law also has shown that if there is no other remedy opened to the applicant, the applicant has every right to make this application. Also where the issue is a matter of law, it is subject to judicial review. In this case, I am of the opinion
H that there is no doubt that the issuance of the said notice affect the rights of the applicant and also their obligation as lawyers representing their client. As learned counsel for the applicants had put it, it is direct interference with the exercise of their duty to their client. There is no remedy opened to the applicants as the non compliance with the notice is clearly an offence under
I that particular s 30. This is clearly shown in sub-ss (6) and (10) of that s 30.

[20] On top of that, I also feel that the issue whether the respondents can issue such notices to the applicants under the circumstances of the case, is issue of law.

[21] If we look at the affidavits filed in this instance by the parties, other than the undisputed fact that the applicants were present during the interview of their client, there is no evidence that they had in fact interfered with the interview. The onus of proving to the satisfaction of the court that their presence would impede investigation in my opinion falls on the respondents; and the respondents have not shown this. Refer to Federal Court decision in *Hashim bin Saud v Yahaya bin Hashim & Anor* [1977] 2 MLJ 116. I do not see any logic of the respondents later ordering the applicants to attend to be examined in relation to the investigation, in the pretext of assisting the investigation, when they are merely lawyers acting and representing their client. How would they be expected to assist the investigation when s 46 of Act itself protects the privilege information between solicitor and client?

[22] The said s 46 of Act 694 read as follows:

> 46(1) Notwithstanding any other written law, a Judge of the High Court may, on application being made to him in relation to an investigation into any offence under this Act, order an advocate and solicitor to disclose information available to him in respect of any transaction or dealing relating to any property which is liable to seizure under this Act.
>
> (2) Nothing in subsection (1) shall require an advocate and solicitor to comply with any order under that subsection to the extent such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any pending proceedings.

[23] As can be seen, even s 46 requires application to be made to a judge of the High Court before an advocate and solicitor can be asked to disclose information available to him but the information excludes privilege information between solicitor and client.

[24] We must always bear in mind that the independence of lawyers is a fundamental principle recognised internationally. Lawyers play a key role in the administration of justice and protection of human rights.

[25] Talking about the role of lawyers, it is pertinent to note that amongst instruments unanimously adopted at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana from 27 August–7 September 1990 was the United Nation Basic Principles on the Role of Lawyers. Malaysia was represented at the said Congress. Although the Basic Principles are not legally binding they should be held in high regard and be given due respect; and as one of its preamble states, be taken into account by government. Of relevance to the instance are the following articles of the said Basic Principles:

16 Government shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17 Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

22 Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

[26] After adopting the Basic Principles it is only right that Malaysia gives due respect and adheres to it. Hence, I am of the view that lawyers must be protected from any form of intimidation and interference in the performance of their obligation to advise and act for clients. In addition, the fundamental principle of solicitor-client confidentiality which lawyers are bound must be preserved.

[27] To me, what is 'decision' in O 53 r 4 of the Rules of the High Court 1980 depends on the facts of each case. In this instance, I am of the view that the notice is a 'decision' which is subject to judicial review because the applicants will be left with no choice but to comply with it as the non compliance of it will result with the applicants committing an offence under s 30 of Act 694. It is clear the notice does affect the applicants by interfering their rights and obligations to act as lawyers for their client. As MP Jain in *Administration Law in Malaysia and Singapore*, (3rd Ed), at p 665 put it aptly, today, certiorari goes not only to a body discharging a quasi-judicial function, but to any body determining the rights of the people. The modern trend is that wherever there is power to determine questions affecting the rights of persons, there is a duty to act judicially and such a determination is subject to certiorari.

[28] I have no doubt that in the circumstances of the case, the issuance of the notice is clearly an act of intimidation and abuse of powers on the part of the respondents. Their client was called to assist in the investigation of an offence against the executive director of NFC. The applicants are just lawyers for their client. Then how could now they be asked to assist in the investigation into the said offence? To me there is no legal basis for the issuance of the notice. Again, I reiterate that the issuance of the notice is clearly an act of intimidation and abuse of powers on the part of the respondents and therefore the issuance of the

notice is void and unlawful.

THE CONCLUSIONS

[29] Based on the above, I agree with the applicants and therefore allow this application in prayer 1(a),(b) and (c).

Application allowed.

Reported by Ashok Kumar